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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/617,566	07/17/2000	Samuel P. Sawan	SUR-004DVCN	8355
7278	7590	10/23/2003	EXAMINER	
DARBY & DARBY P.C. P. O. BOX 5257 NEW YORK, NY 10150-5257			LEVY, NEIL S	
			ART UNIT	PAPER NUMBER
			1616	15
DATE MAILED: 10/23/2003				

Please find below and/or attached an Office communication concerning this application or proceeding.



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APPLICATION NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO.
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EXAMINER

ART UNIT	PAPER NUMBER
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15

DATE MAILED:

This is a communication from the examiner in charge of your application.
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OFFICE ACTION SUMMARY

☒ Responsive to communication(s) filed on 9/5/03

☐ This action is FINAL.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 9 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 25-33, 35-38, 50-55 is/are pending in the application.

Of the above, claim(s) 37, 38 is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 25-33, 35-36, 50-55 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☒ Claims 25-33, 35-38, 50, 55 are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.

☐ received in Application No. (Series Code/Serial Number) _____

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☐ Notice of Reference Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s): _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

— SEE OFFICE ACTION ON THE FOLLOWING PAGES —

BEST AVAILABLE COPY

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 37-38 stand withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 6.

Claims 25-33, 50-55 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-6 of U.S. Patent No. 5,849,311. Although the conflicting claims are not identical, they are not patentably distinct from each other because, the rejection of record is still maintained.

Claims 25-28, 30-32, 35 and 36, 50-55 is rejected under 35 U.S.C. 102(b) as being anticipated by Mermel et al '93 or Fox 5,019,096.

The rejection of record is still maintained; the rewritten claims are still met by Mermel, as the silver-functionalized sulfadiazine – chlorhexidine coated catheter meets the instant substantially non leach ably bound, as the instant invention is similarly claimed. See, in particular, @ Fox, col. 9, lines 25-34.

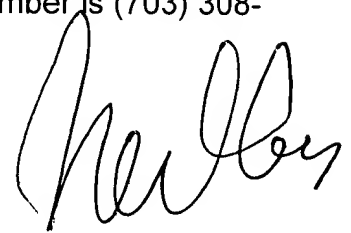
Applicant's arguments filed on 9/08/03 have been fully considered but they are not persuasive. Applicant's arguments have been considered and rejections withdrawn accordingly but, as indicated above, Fox and Mermel still provide the invention to the substantial extent instantly claimed. It is unclear what applicant has done, Fox and mermel have not whatever it is, it's unclaimed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neil Levy whose telephone number is (703) 308-2412. The examiner can normally be reached on Tuesday through Friday 7 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman Page can be reached on (703) 308-2927. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

Levy/LR
October 3, 2003



NEIL S. LEVY
PRIMARY EXAMINER